88-1340

No.

Supreme Court, U.S.
FILED
FEB 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1988

CHARLES F. WISHART,
and BOBBIE S. WISHART,
Appellants,
vs.
LESLIE M. BATES,
and, RANDALL A. BATES,
Appellees,

APPEAL FROM THE SUPREME COURT
OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

CHARLES F. WISHART, Esquire,
Attorney at Law,
and,
BOBBIE S. WISHART, his wife,
410 West Bloomingdale
Brandon, Florida 33511-7402

Phone: (813) 685-1240

Appellants appear pro se.

QUESTIONS PRESENTED

PAGE

QUESTION I

WAS THE CAUSE AT ISSUE SO AS TO ALLOW THE COURT TO SET IT FOR PRETRIAL OR TRIAL PURSUANT TO RULE 1.440 OF THE FLORIDA RULES OF CIVIL PROCEDURE SO LONG AS THERE WAS INTER-ALIA A MOTION TO STRIKE WISHARTS' LAST PLEADING? 15

QUESTION III

MUST THE CHRISTIAN ETHIC STILL BE ENFORCED BY THE COURTS, AND IF NOT, WHAT ETHICAL VALUE SYSTEM MUST THE COURT THEN ADHERE TO IN LIEU THEREOF? 7

PARTIES BELOW

CHARLES F. WISHART*
BOBBIE S. WISHART*
LESLIE M. BATES
RANDALL A. BATES†

* Petitioners in this Court.

† Did not make an appearance below.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES BELOW	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
JURISDICTIONAL STATEMENT	1
OPINION BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS, & RULES	4
HOW THE FEDERAL QUESTION WAS RAISED	6
QUESTION III	7
STATEMENT OF THE CASE	7
PARTIES:	8
JUDGES NAMED AND THEIR RELEVANT ORDER:	10
QUESTION I	15
THE QUESTION IS SUBSTANTIAL	28
CONCLUSION	30

TABLE OF AUTHORITIES

CITATIONS	PAGE
CASES:	
Bates v. Wishart, 512 So.2d 977 (Fla. 2d DCA 1987) reh den, Sept. 23, 1986, mandate October 9, 1987	2, 7-8, 9, 19, 22
Bates v. Wishart, 13 Jud. Cir, Case No. 83-7240	8
Coleman v. Coleman, 190 So.2d 332 (Fla. 1966)	14
Davis v. Beason, 133 U.S. 333, 10 S. Ct. 299, 33 L. Ed. 637	28
Di Teodoro v. Lazy Dolphin Development Company, 432 So.2d 625, 626 (Fla. 3d DCA 1983)	19
Ellis v. Ellis, 242 So.2d 745 (Fla. 4th DCA 1971)	12
Esch et al. v. Forester et al., 127 So. 336 (Fla. 1930)	12
Ferrell v. Ruege, 397 So.2d 723 (Fla. 1st DCA 1981)	14
Gray v. Gray 107 So.2d 261 (Fla. 1926)	14
In The Interest of K. S. K., A Minor Child, 294 So.2d 50, 51 (Fla. 1st DCA 1974)	14
Johnson et al. v. McKinnon, 54 Fla. 221, 45 So. 23 (1907)	12, 17

TABLE OF AUTHORITIES

CITATIONS	PAGE
Johnson v. Johnson, 284 So.2d 231 (Fla. 2d DCA 1973)	11, 21
King v. Daniel, 11 Fla. 91, 99 (1864-5)	20-21
Knowles v. United States, 8 Cir., 170 F. 409	28
Leeds v. C. C. Chemical Corp., 280 So.2d 718, 719 (Fla. 3d DCA 1973)	12
P D v. C S, 304 S.W.2d 437, 444, (Mo. Springfield C.A. 1965)	23
Randolph v. Randolph, 1 So.2d 480, 481 (Fla. 1941)	21
Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244	28
Riley v. Riley, 271 So.2d 181 (Fla. 1st DCA 1972)	21
Ryan v. Ryan, 277 So.2d 266 (Fla. 1973)	11
Securities and Exchange Commission v. C. M. Joiner Leasing Corp. et al., 53 Fed.Supp. 714, 715, (U.S. Dist. Ct. N. D. Texas 1944)	17
Sheffey v. Futch, 250 So.2d 907, (Fla. 4th DCA 1971)	16

TABLE OF AUTHORITIES

CITATIONS	PAGE
State ex rel. Singleton v. Woodruff, 13 So.2d 704, 705, (Fla. 1943)	6, 11, 21, 28
State v. Battle, 302 So.2d 782, 783 (Fla. 3d DCA 1974)	12
Watson et al. v. State 194 So. 640, 642 (Fla. 1940)	21
Wishart v. Bates, 487 So.2d 342 (Fla. 2d DCA 1986) rel. den. May 1, 1986, mandate May 16, 1986	2, 6, 8, 15, 16, 19, 25
Wishart v. Bates, 531 So.2d 955 (Fla. Sept. 8. 1988, reh. den. Nov. 8, 1988	2, 8
TREATIES AND CONSTITUTIONS:	
U. S. Const. Article VI, Constitution & Treaties- Supreme Law of Land	3, 21
U. S. Const. Amend. I, Freedom of Religion	3
U. S. Const. amend. V, Due Process	3, 16, 21
U. S. Const. amend. XIV, Due Process	4, 16, 21
Treaty of Amity, Settlement and Limits, Article V between the United States of America and His Catholic Majesty, dated February 22, 1819, 8 U.S. Stat. at Large 252	1-2, 4, 21
Paris Peace Treaty (1898), Article X, With the United States of America and the King of Spain, dated December 10, 1898. 30 U.S. Stat. at Large 1754	2, 4, 21

TABLE OF AUTHORITIES

CITATIONS	PAGE
Treaty of Friendship and General Relations. between the United States and Spain, dated July 3, 1902, 33 U.S. Stat. at Large 2105	2, 4, 21
Article I, Decl. of Rts., Fla. Const.	
§ 1. *Political Power*	5
§ 2. *Basic Rights*	5
§ 3. *Religious Freedom*	5
§ 9. *Due Process*	5, 16
§ 21. *Access to Courts*	5
Article V, § 3 (b), Florida Constitution: Jurisdiction — Supreme Court	5-6
Article V, § 15, Florida Constitution: Attorneys; admission and discipline, Fla. Const.	6
STATUTES:	
28 U.S.C. § 1257(1 & 2)	2, 3
Public Law 100-352 [S. 952]; June 27, 1988, Sec. 3. Section 1257(a) of title 28,	3
Public Law 100-352 [S. 952]; June 27, 1988, Sec. 7. Effective Date, Approved June 27, 1988	2, 3
Section 39.01(27), Definitions- *Legal Custody*, Fla. Stat. (1977)	9

TABLE OF AUTHORITIES

CITATIONS	PAGE
Section 61.001, Purpose of Chapter, Fla. Stat. (1983)	21
Section 61.011, Dissolution in Chancery, Fla. Stat. (1983)	11, 21
Section 61.13 2(b)2.c, Grandparent visitation, Fla. Stat. (Supp. 1978)	14, 23
Section 61.13(3)(f), Morals, Fla. Stat. (Supp. 1983)	21
Section 61.131, Notice and opportunity to be heard, Fla. Stat. (1983)	9, 10, 26
Section 798.01, Fla. Stats. (1983), Adultery	21
RULES:	
Fla. R. Civ. P., 1.440 *Setting Action for Trial*	12, 15, 27
Fla. R. App. P., Definitions - *Rendered*, 9.020(g), Fla. R. App. P.	3
Fla. R. App. P., *Costs*, 9.400(a)(1, 2, and 4)	20
MISCELLANEOUS:	
46 Am Jur 2d Judgements, D. Effect of Invalidity, § 49 Void judgements.	17
46 Am Jur 2d Judgements, D. Effect of Invalidity, § 50 Validation of judgements.	17

TABLE OF AUTHORITIES

CITATIONS	PAGE
Blacks Law Dictionary, 4th Ed. pg. 1482, *REVERSE*	16
Blacks Law Dictionary, 4th Ed. pg. 1689, *TYRANNY*	25
The Fla. Bar Jour., Vol. LX, No. 8 Sept. 1986, pg. 448 article entitled *Oath of Admission*	9
The Fla. Bar Jour. Vol. LXI, No. 10, November 1987, page 11, article entitled *Family Law Judicial System, Indictment From Within*	21, 30
The Holy Bible, K.J.V., Matt. 23: 23-24	23

No.

IN THE

Supreme Court of the United States

OCTOBER TERM 1988

CHARLES F. WISHART,
and BOBBIE S. WISHART,
Appellants,
vs.
LESLIE M. BATES,
and, RANDALL A. BATES,
Appellees,

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT

Charles and Bobbie Wishart, Appellants, appeal the final judgement of the Supreme Court of Florida, dated September 8, 1988, reh. den., November 8, 1988, which opinion ignored the petition to adhere to the Christian Ethical Values in making its decision, as required by Florida Law and as well by one or more of the following treaties, raised and denied below:

Treaty of Amity, Settlement and Limits, Article V between the United States of America and His Catho-

lic Majesty, dated February 22, 1819, 8 U.S. Stat. at Large 252 (III-506);

Paris Peace Treaty (1898), Article X, With the United States of America and the King of Spain, dated December 10, 1898, 30 U.S. Stat. at Large 1754 (VI-1);

and, Treaty of Friendship and General Relations between the United States and Spain, dated July 3, 1902. 33 U.S> Stat. at Large 2105 (III: p. 508)

The grounds for invoking appeal is based upon the denial of rights granted by the aforesaid treaties, and as a consequence, the many abuses of due process and equal protection rights, denied the Wisharts thereby.

OPINION BELOW

The Supreme Court of the State of Florida opinion (App.A. *infra*) is reported as *Wishart v. Bates*, 531 So. 2d 955 (Fla. Sept. 8, 1988), reh.den. Nov. 8, 1988.

The opinion reversed in part *Bates v. Wishart*, 512 So.2d 977 (Fla. 2d DCA 1989), reh.den. Sept. 23, 1986, 86, "restoring visitation" which was in fact and effect an illegal modification of a prior visitation, that in turn was subordinate to the Wisharts' right to restoration of the Temporary Primary Residency they had enjoyed before, and were entitled to after *Wishart v. Bates*, 487 So.2d 342 (Fla. 2d DCA 1986), reh.den. May 1, 1986, with all but the 1986 opinion unlawful.

JURISDICTION

Wishart v. Bates, (1988), *Ibib*, was entered on the 8th day of September 1988, before the amendment to 28 U.S.C. § 1257(1, 2), by Public Law 100-352 [S. 952];

June 27, 1988, Sec. 3. Section 1257(a) of title 28, became operative to effectively deny the WISHARTS an appeal pursuant to Public Law 100-352 [S. 952]; Sec. 3. Section 1257(a) of title 28.

On the other hand, since the rehearing motion was disposed of on the 8th day of November 1988, and pursuant to Rule 9.020(g), Fla.R.App.P., the opinion was not rendered until the aforesaid date, this appeal was timely filed within 90 days from the 8th day of November 1988, as allowed by Public Law 100-352 [S. 952]; June 27, 1988, Sec. 7. Effective Date.

The appeal then is being docketed in this court within 90 days from the denial of rehearing below. The jurisdiction of this court is invoked under 28 U.S. C. § 1257(1) and (2).

CONSTITUTIONAL PROVISIONS AND RULES

Article VI, United States Constitution:

This constitution . . . and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary not withstanding.

First Amendment, United States Constitution:

Congress shall make no law . . . prohibiting the free execise . . .[of religion] . . . .

Fifth Amendment, United States Constitution:

No person . . . shall be deprived of life, liberty, or property, without due process of law . . . .

Fourteenth Amendment, United States Constitution:

Section 1. All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Article V, Treaty of Amity Settlement and Limits, between the United States of America and His Catholic Majesty, dated February 22, 1819, 8 U.S. Stat. at Large 252:

The inhabitants of . . . [*inter-alia*, Florida] shall be secure in the free exercise of their religion, without any restriction . . . .

Article X, Paris Peace Treaty (1898), With the United States of America and the King of Spain, dated December 10, 1898. 30 U.S. Stat. at Large 1754:

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

Article IV, Treaty of Friendship and General Relations, between the United States and Spain, dated July 3, 1902. 33 U.S. Stat. at Large 2105:

The citizens or subjects of the two High Contracting Parties shall enjoy in the territories of the other the right to exercise their worship . . . subject to the Constitution, Laws and regulations of the respective countries.

Section 1, Declaration of Rights, Florida Constitution:

Political Power.—All political power is inherent in the people. The ennuciation herein of certain rights shall not be construed to deny or impair others retained by the people.

Section 2, Declaration of Rights, Florida Constitution:

Basic Rights.—All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; . . . No person shall be deprived of any right because of . . . religion . . . .

Section 3, Declaration of Rights, Florida Constitution:

Religious freedom.—There shall be no law . . . prohibiting of penalizing the free execise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety . . . .

Section 9, Declaration of Rights, Florida Constitution:

Due Process.—No person shall be deprived of life, liberty, or property without due process of law . . . .

Section 21, Declaration of Rights, Florida Constitution:

Access to Courts.—The courts shall be open to every person or redress of any injury, and justice shall be administered without sale, denial, or delay.

Article V, Section 3, Florida Constitution:

Supreme court,—

. . .

(b) JURISDICTION.—The Supreme Court:

. . .

(3) May review any decision of a district court of appeal that expressly . . . affects a class of constitutional officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

. . .

Article V, Section 15, Florida Constitution:

Attorneys; admission and discipline.

The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

HOW THE FEDERAL QUESTION WAS RAISED

There is a sophistry that says that the social workers may not make "moral judgements" for that would be imposing religion on the persons, a violation of the proverbial "separation of Church and State".

Having therefor protested, that the reports made by the social workers and court counsellors, all of a like mind, made it imposible to show anyone unfit, and to thus protect a child at hazard.

Having objected at trial, the WISHARTS raised the question in their appeal from JUDGE MENENDEZ' "Final Judgement of Dissolution of Marriage", by requesting the Panel in the *Wishart v. Bates*, (1986), Id. at 1, to restate the law, as contained in *State ex rel. Singleton v. Woodruff*, 13 So.2d 704, 705, (Fla. 1943), (III: p. 491) when they posed their third question:

QUESTION III

MUST THE CHRISTIAN ETHIC STILL BE ENFORCED BY THE COURTS, AND IF NOT, WHAT ETHICAL VALUE SYSTEM MUST THE COURT THEN ADHERE TO IN LIEU THEREOF?

All three treaties, were invoked, as were other authorities pointing to the necessity of having some system of ethics underlying our law, a common ground of agreed upon values, and in America we have the Christian system of ethics to which the Courts are required to adhere to, honor and enforce.

The sylogism is, laws are the codification of the mores, the moral values of a (our) society, and therefore, with no specific system of morals, there is no law.

The proof of that sylogism, look to our broken homes, violent streets, and sadly our Courts cannot tell for example whether a marriage is broken or not, why people should not be promiscuous, the hazards of homosexuality, all of which are answered in the Holy Bible, but little understood by most of our people.

STATEMENT OF THE CASE

CITATIONS:

Citations are to Charles' (The (Wisharts') 5 Volume appendix, Pages 1 to 987 as (V: p. 802) presented before the Supreme Court when Charles as a constitutional officer protested the appellate practices, used in the Table of Citations as (II-210) to help find copies of the cases, while LESLIE'S 20 page "Initial Brief" filed before the Second District, *Bates*

v. *Wishart*, (1987), *Id.* at 2, is in Volume V pages 802-821 and will be cited therefrom as (V: 802 p. 1).

PARTIES:

Charles F. (Charles) and his wife Bobbie S. (Bobbie) Wishart (Wishart or the Wisharts) are the paternal step-grandfather and grandmother of Tiffany Michelle Bates (Tiffany), the mother and step-father of Randy A. Bates (Randy) (I: pp. 17 ¶ 6 and 1, p. 18 ¶ 2 and p. 20) who is Tiffany's father, ex-husband of Tiffany's mother Leslie, and the step-son of Charles; all of whom (save Randy who participated at trial through the JUDGE MENENDEZ final hearing, but never responded thereafter) are and were from the beginning necessary parties in the family law court dissolution of marriage suit styled *Bates* v. *Wishart*, 13th Judicial Circuit, Case No. 83- 7250, and the appeals and opinions, cited by year (1986 -87 or 88) for clarity, spawned thereby, including:

> *Wishart, et ux.*, v. *Bates, et al.*, 487 So.2d 342 (Fla. 2d DCA 1986), reh den. May 1, 1986, mandate, May 16, 1986 (II: pp. 219-222).
>
> *Bates* v. *Wishart*, 512 So.2d 977 (Fla. 2d DCA 1987), reh. den. Sept. 23, 1987. (II: pp. 226-229, 231)
>
> *Wishart* v. *Bates*, 531 So.2d 955 (Fla. Sept. 8, 1988, reh.den, Nov. 8, 1988.

Charles, a party, but also an attorney at law, an officer of the court, a Constitutional officer by Article V, § 15, Attorneys; admission and discipline Fla. Const., (IV: p. 626), invoked that status to challenge the abuse of the appellate courts in *Wishart* v. *Bates* (1988) *Id.*, a discretionary petition to the Su-

preme Court opposing *Bates* v. *Wishart* (1987), in order to *inter-alia* fulfill his obligation under his oath, The Fla. Bar Jour., Vol. LX, No. 8 Sept. 1986, p. 448, "Oath of Admission" (III: p. 505), to protect and defend the Constitutions of our land, and to prevent fraud and deceit perpetrated upon or by the courts, to resist tyranny, the arbitrary use of power (or jurisdiction) as has arisen in this litigation.

Leslie joined the Wisharts as necessary parties pursuant to Section 61.131, Fla. Stat. (1983) (III: p. 503), they received, both a letter of guardianship, defined by Section 39.01 (23), Fla. Stat. (1983) (I: p. 20 and III: p. 510-512 at p. 511), and physical custody of TIFFANY (I: pp. 5 ¶ 6 & 6 ¶ 7) from Randy, and because of neglect by LESLIE kept her.

Sections 39.01 (23) and 61.131, Fla. Stat. (1983) reads in relevant part:

> **39.01. Definitions**
>
> When used in this chapter.
>
> (23) "Legal custody means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian . . . the right to have pysical custody of the child and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.
>
> **61.131 Notice and opportunity to be heard.** — Before a decree is made under this act, reasonable notice and opportunity to be heard shall be given to the contestants . . . [including] any person who has physical custody of the child . . . .

JUDGES NAMES AND THEIR RELEVANT ORDERS:

The Honorable Ralph Steinberg (Judge Steinberg) granted temporary primary residency status and the authority to care for Tiffany's health to Bobbie by his order entitled "Order Regarding Temporary Primary Residency Of Minor Child And Temporary Visitation, And Order Continuing The Former Order To Show Cause", dated the 28 December 1983. (II: pp. 201-202 ¶¶ 1, 2 and 6)

By this order Bobbie was granted temporary primary residency status, while Charles was distinguished as a "step" grandfather, ignoring his status under Section 61.131, Fla. Stats. (1983), wherein the order reads:

> . . .
> The Court heard testimony and argument of counsel . . . .
>
> It is therefore,
>
> ORDERED AND ADJUDGED,
>
> 1. That the temporary primary residency of the minor child, Tiffany Michelle Bates, shall be with the paternal grandmother, Bobbib Sue Wishart every Monday at 8:00 A. M. until the following Friday at 6:00.
>
> 2. That the Wife, Leslie M. Bates, shall pick up the child at the residence of Bobbie Sue Wishart each Friday at 6:00 P.M. and return the child to the primary residence at 8:00 A.M. the following Monday and shall pick up the child at 6:00 P.M. each Tuesday and return the child to

the primary residence the following Wednesday at 8:00 A.M.

. . . .

The Honorable Judge Manuel Menendez, Jr. (Judge Menendez), avoided the Wisharts invocation of the clean hands doctrine *State ex rel. Singleton* v. *Woodruff*, 13 So.2d 704, 705, (Fla. 1943) (III: p. 491), *Ryan* v. *Ryan*, 277 So.2d 266 (Fla. 1973) (III: p. 476), *Johnson* v. *Johnson*, 284 So.2d 231 (Fla. 2d DCA 1973) (IV: p. 734), and Section 61. 001, Dissolution in Chancery, Fla. Stat. (1983) (III: p. 483) against Leslie's standing before Chancery due to her misconducts (I: pp. 27-51) by the simple expedient of not addressing Wisharts' motion challenging Leslie's jurisdiction, and by not dismissing Leslie's petition, but rather by issuing his "Pretrial Conference Order" dated August 22, 1984 (II: pp. 244- 247, at 246 § 10 c)) which in relevant part reads:

> 10. In respect to the Wisharts' petition for reconsideration, Motion for Dismissal with Prejudice, Motion to Grant Custody, and Motion for Contempt this Court rules as follows:
>
> . . .
>
> c) The Wisharts' request to Dismiss the Action with Prejudice against Leslie Bates due to Default, the unclean hands of Leslie, and for the best interest of Tiffany, is *denied since this issue is moot at this time*; however, as previously mentioned [at p. 245 ¶ 3] the Wisharts shall have the right to file an amendment to their pleadings to prove the doctrine of unclean [sic] hands. . . . (Emphasis added)

The order belies itself, for if the facts presented do not show LESLIE subject to dismissal based upon the clean hands doctrine, then the motion should have

been both heard and denied, but on the other hand, if there was no grounds for the jurisictional challenge, then it follows, that the amendment should not have been allowed.

In either case, by allowing the amendment it activated Fla. R. Civ. P. 1.440 Setting Action for Trial (V: p. 952), and the matter was not at issue and could neither be pretried nor tried.

The Wisharts filed their "Grandparents' Amended Answer First Affirmative Defense" on September 4, 1984, and Leslie filed her "Motion to Strike First Affirmative Defense Alleged in Grandparents' Amended Defense" (II: pp. 248-253).

Wishart objected, the matter was not at issue, could not be tried (II: pp. 256-9, 353) but Judge Menendez tried the "final hearing" without power, without jurisdiction, in violation of the settled law, of *Leeds* v. *C. C. Chemical Corp.*, 280 So.2d 718, 719 (Fla. 3d DCA 1973) (IV: p. 613), citing *Ellis* v. *Ellis*, 242 So.2d 745 (Fla. 4th DCA 1971) (IV: p. 608), accord *Esch et al.* v. *Forester et al.*, 127 So. 336 (Fla. 1930) (IV: p. 693), and, Fla. R. Civ. P. 1.440 Setting Action for Trial (V: p. 952), *State* v. *Battle*, 302 So.2d 782, 783 (Fla. 3d DCA 1974) (IV: p. 618), and *Johnson et al.* v. *McKinnon*, 54 Fla. 221, 45 So. 23 (1907) (III: p. 513).

Judge Menendez, executed his "Final Judgement of Dissolution of Marriage", (II: pp. 211-218) On February 26, 1985, nunc pro tunc, December 4, 1984, rendered on the 25th day of April 1985 (III: p. 411).

By this void order Charles was excluded, he was after all only a step-grandfather while Bobbie was

given the following token visitation which remains the lawful order to this date:

> 13. The paternal grandmother, Bobbie Sue Wishart, shall be entitled to specific visitation with Tiffany for one full day every two months, to include overnight visitation. In the event the parties cannot agree on the date, it will be every odd-numbered month, commencing with January, 1985, on the third Sunday, beginning actually at 8:00 P.M. on the proceeding Saturday evening and ending Sunday evening at 8:00 P.M. This visitation will be in addition to any visitation she might enjoy during the period of time that the child is in the care, custody and control of the husband.

The Wisharts objected and appealed (II: pp. 304 -447, III: p. 412).

The Honorable John G. Hodges (Judge Hodges), during the pendancy of the appeal, entered two orders amending the Menendez judgement, to wit (1) "Adjudication of Contempt Order Regarding Temporary Change of Visitation and Notice of Hearing" dated February 25, 1986 (IV: pp. 755-756), and (2) "ORDER" dated the 16th day of April 1986, nunc pro tunc 3/22 /86 (IV: p. 757), on the presumption Judge Menendez' void Judgement is valid, leaving the Wisharts with the following visitation, to wit:

> Leslie M. Bates (Boggs) is adjudicated to be in willful contempt of Court for failure to appear and for failure to allow the visitations provided by the Final Judgement of Dissolution of Marriage. (IV: p. 755)

> 1. That the . . . [Wisharts] are granted visitation with . . . [Tiffany] . . . every Saturday commencing 22 March 1986 from 5:00 P.M. until 8: 00 P.M. . . . in the home of the . . . [Wisharts]. Said visitation shall continue until further order of Court. (IV: p. 757)

In lieu of granting Wisharts' petitions for the restoration of the status they were entitled to under Judge Steinberg's Order on the grounds Judge Menendez' Judgement was void ab initio, and while the appeal was pending, Judge Hodges, modified Judge Menendez' Judgement which granted "grandparents" visitation to the Wisharts under Section 61.13(2)(b)2.c, Fla. Stat. (Supp. 1978) on 25 Feb. 1986. (III: pp. 501).

Judge Hodges' Order of the 16th day of April 1986 further modified the visitation by moving it to the Wishart home due to Leslie's further acts of misconduct.

No appeal was taken from either Order and the principles of res judicata bar its amendment *Gray v. Gray*, 107 So.2d 261 (Fla. 1926) (IV: p. 695), *Coleman v. Coleman*, 190 So.2d 332 (Fla. 1966) (IV: p. 606), *Ferrell v. Ruege*, 397 So.2d 723 (Fla. 1st DCA 1981) (V: p. 970), *In The Interest of K. S. K., A Minor Child*, 294 So.2d 50, 51 (Fla. 1st DCA 1974) (IV-614), the order stands, inviolate, subject only to the reversal of Judge Menendez' Judgement, which occured, or a subsequent evidentiary hearing showing changed circumstances, which neither Judge Taylor's hearing nor any other accomplished.

On April 2, 1986, The Honorable Judges Scheb, Campbell and Sanderlin, the first panel, did in fact and deed, reverse and remand Judge Menendez'

Judgement in the case of *Wishart, et ux., v. Bates, et al.*, 487 So.2d 342 (Fla. 2d DCA 1986), reh den. May 1, 1986, mandate, May 16, 1986 (II: pp. 219-222).

The basis for Wisharts' appeal, the matter was not at issue since Judge Menendez put the matter to trial over Wisharts' objections, the mistrial was held in violation of Fla. R. Civ. P. 1.440 Setting Action for Trial (V: p. 952).

There were many other errors in Judge Menendez' "trial" and Judgement, (II: 304-342), but that was the specific question the Wisharts raised on appeal to reverse the "Final Judgement of Dissolution of Marriage", which succeeded in *Wishart, v. Bates*, (1986) *Id*, at 2, which grounds are explicitly set forth in the excerpts from the Wisharts' Initial Brief in that appeal (Vol. III: at pp. 586-594) to wit:

QUESTION I

WAS THE CAUSE AT ISSUE SO AS TO ALLOW THE COURT TO SET IT FOR PRETRIAL OR TRIAL PURSUANT TO RULE 1.440 OF THE FLORIDA RULES OF CIVIL PROCEDURE SO LONG AS THERE WAS INTER-ALIA A MOTION TO STRIKE WISHARTS' LAST PLEADING?

The opinion said:

> . . . [The Wisharts] appeal the denial of their petition . . . [to retain their] custody of their granddaughter.
>
> The Court having reviewed the record finds that . . . [the Wisharts] should have been afforded an opportunity to be heard and present evidence at the custody hearing.

> We therefore reverse and remand for further proceedings consistent herewith.

The very words " . . . should have been afforded an opportunity to be heard and present evidence . . . ." are the generic definition of due process of law in *Sheffey v. Futch*, 250 So.2d 907, (Fla. 4th DCA 1971) (IV: p. 610), contemplated in Article I, Decl. of Rts., § 9. Due Process, Fla. Const. (IV: p. 624), U. S. Const. amends. V and XIV, (IV: pp. 700-1), and such language alone shows the Wisharts were denied due process of law, which should be adequate to reverse Judge Menendez' void Judgement.

Since Judge Steinberg's order gave the temporary primary residency status to Bobbie, and with some adjustment that was her status going into the "final hearing", while the "step-grandfather" label was insufficient to deny Charles his standing to protect Tiffany, it is clear that the Wisharts petition was to retain custody (by what ever name you call it) and that since the first panel reversed Judge Menendez' Judgement, *Wishart v. Bates*, (1986), *Id.*, at 2, and treated the Wisharts equally, it must follow that both were entitled to the joint custody or primary residency status they had going into the trial.

Blacks Law Dictionary, 4th Ed. pg. 1482, REVERSE (IV: pg. 699) reads:

> **REVERSE.** To overthrow, vacate, set aside, make void, annul, repeal, or revoke, as to reverse, a judgement . . . or to change to the contrary or to a former condition.

Securities and Exchange Commission v. *C. M. Joiner Leasing Corp*, et al., 53 Fed.Supp. 714, 715 (U. S. Dist. Ct. N. D. Texas 1944) (III: p. 595) is in accord.

Johnson et al. v. *McKinnon*, 54 Fla. 221, 45 So. 23 (1907), *Id.*, at 12, (III: p. 513-518) holds when a court in the proper exercise of its jurisdiction violates a rule of procedure, then it has exceeded its jurisdiction (p. 26), the judgement is void, the parties must be restored to their status prior to the entry of the judgement, and on pg. 28 the court sets forth that law when it says:

> Now the rule is that, when a judgement or decree is reversed, the defendant is entitled to be restored to all things which he has lost thereby.

Neither 46 Am Jur 2d Judgements, D. Effect of Invalidity, § 49 Void judgements. (III: p. 519-521), nor 46 Am Jur 2d Judgements, D. Effect of Invalidity, § 50 Validation of judgements (III: p. 521-522), speaks well of orders issued without jurisdiction, to wit:

§ 49 Void Judgements.

> A void judgement is not entitled to, and is attended by none of the consequences of, a valid judgement. Indeed a void judgement need not be recognized by anyone, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any right be based thereon.
>
> Although it is not necessary to take steps to have a void judgement reversed or vacated, it is

> open to attack or impeachment in any proceeding, direct or collateral, and at any time or place, at least where the invalidity appears upon the face of the record. It is not entitled to enforcement and is ordinarily, no protection to those who seek to enforce it. All proceedings founded on the void judgement are themselves regarded as in valid and ineffective for any purpose.
>
> In short, a void judgement is regarded as a nullity, and the situation is the same as it would be if there were no judgement. It accordingly leaves the parties litigant in the same position they were in before trial.

Charles erroneously lost his custody over Tiffany by Judge Steinberg's Order, the courts have er- red in peceiving this as a grandparent issue whereas the Wisharts' standing was granted by Section 61.131, Fla. Stats. (1983), and the first panel recognized this by not distinguishing Charles from Bobbie.

Wishart lost their status granted by Judge Steinberg through operation of Judge Menendez void-*ab-initio* and now voided "Final Judgement of Dissolu- ion of Marriage", and having reversed it demand re- storation based on the reversal, or full custody based on the clean hands doctrine.

The Wisharts will always maintain that position, and their right to collaterlly attack it until they pre- vail under the law of our land.

The Honorable Peter J. T. Taylor (Judge Tay- lor) entered two orders, the first being entitled "Case Management Order" dated July 28, 1986 (IV: pp. 758-759).

This Order contains a key phrase when it reads in relevant part:

> . . .
>
> 8. That a hearing on the following motions in the following sequence shall be heard on 6 August 1986 from 1:30 PM to 3:00 PM:
>
> A. Motion for costs by Charles Wishart and Bobbie Sue Wishart;
>
> . . .
>
> H. Motion for Temporary Primary Residency of the Minor Child by Bobbie Sue Wishart;
>
> *This shall be a hearing of legal arguments only and not an evidentiary one.* (Emphasis added.)

Those costs were Wisharts appellate costs, were allowed by the reversal in *Wishart v. Bates*, (1986), *Id.* at 2, which costs, granted by Judge Taylor were denied by the second panel in *Bates v. Wishart*, (1987), *Id*, at 2, contrary to *Di Teodoro v. Lazy Dolphin Development Company*, 432 So.2d 625, 626 (Fla. 3d DCA 1983) (IV: pp. 622-3) which second panel construed Rule 9.400(a), Fla. R. App. P. (IV: p. 656), denying costs on the stated ground that:

> . . . [A]ppellees were not the prevailing parties in the prior appeal . . . . (II: p. 228 ¶ 4)

The petition for temporary primary residency, was the Wisharts seeking restoration, Judge Taylor made the petition solely a question of law, the heart of the *Bates v. Wishart*, (1987), *Id.* at 2, appeal.

Judge Taylor's second order is entitled "*Order Granting Motion For Appellate Costs*; Denying Motion Objecting To use of The Court Counsellors Office;

Denying Motion to Strike Writ of Habeas Corpus and Motion to Quash Writ of Habeas Corpus; Granting Moion To Disallow Service on Sunday; Reserving Ruling On Motion for Attorney's Fees, Motion to Tax Costs and Attorney's Fees; Order Regarding stipulation On Counseling Evaluation; Order Regarding Home Study; and *Order Denying Amended Motion For Order To Enforce Primary Residency*" (Emphasis added), dated the 22nd day of August 1986 (II: pp. 223-225), which with his first laid the predicate for the appeal and opinion of *Bates v. Wishart*, (1987), *Id.*, at 2.

Judge Taylor, in the second order, ruled in relevant part:

> 1. The court grants the motion for the Wisharts appellate costs pursuant to Rule 9.400(a)(1, 2, and 4) of the Rules of Appellate Procedure . . . .
>
> 6. The Court finds that the opinion of the Second District Court of Appeal dated the 2d day of April 1986, mandate issued the 16th day of April 1986, did not completely reverse the Final Judgement dated the 25th day of February 1985, nunc pro tunc, December, 1984, and therefore did not require a return to the temporary primary residency and/or custody status enjoyed by the WISHARTS immediately prior to the Final Judgement, and that the Wisharts are not entitled to the restoration of either temporary custody or primary residency in either or both of them, but only the opportunity to be heard on their Petition for Custody of their granddaughter.

It is a fact, the "Final Judgement of Dissolution of Marriage" was not "completely reversed", but would have been were the moral rationale of *King v.*

Daniel, 11 Fla. 91, 99 (1864-5) (III: p. 484); *Watson et al. v. State*, 194 So. 640, 642 (Fla. 1940) (IV: p. 706); *Randolph v. Randolph*, 1 So.2d 480, 481 (Fla. 1941) (III: p. 489); *State ex rel. Singleton v. Woodruff, Id.*, at 6; *Ryan v. Ryan, Id.*, at 11; *Johnson v. Johnson, Id*, at 11; Sections 61.001, 61.011, 61.13(3)(f) and 798.01, Fla. Stats. (1983) (III: pp. 483, 501 and IV: p. 629); Treaty of Amity, Settlement and Limits, Article V, between the United States of America and His Catholic Majesty, dated February 22, 1822 (III: p. 506-7); Paris Peace Treaty (1898), Article X, With the United States of America and the King of Spain, dated De-December 10, 1898 (VI: pp. 1-9); Treaty of Friendship and General Relations, between the United States and Spain, dated July 3, 1982 (III: p. 508-9); U. S. Const. Article VI, Treaties- Supreme Law of Land (V: p. 951); U. S. Const. amend. V, Due Process (IV:p. 700); and the U. S. Const. amend. XIV, Due Process (IV: p. 701-2); not have been abolished by fiat, taking our moral values with it, an perverting the exquisite language of Section 61.001, Purpose of Chapter, Fla. Stat. (1983) (III: p. 483), the import of Section 61.011, Dissolution in Chancery, Fla. Stat. (1983) (III: p. 483), to produce the automatic divorce found in *Riley v. Riley*, 271 So.2d 181 (Fla. 1st DCA 1972) (III: p. 470), the abolition of the clean hands doctrine which leaves Chancery impotent and our society on the verge of collapse, as we find documented in The Fla. Bar Jour. Vol. LXI, No. 10, November 1987, page 11, article entitled "Family Law Judicial System, Indictment From Within", (III: p. 464), for with no ethical value system to adhere to there is no law, for law is the embodiment of our law, and without the Christian Ethic we find anarchy and tyranny.

The Wisharts of course had no standing to contest the dissolution portion of the litigation, unless as guardians of Tiffany for they are all she has, but

they certainly had standing to contest their claim to keep that custody, guardianship, and/or temporary primary residency status that gave them the power to protect Tiffany from Leslie's medical neglect of Tiffany (II: pp. 201-210), and to provide her with a safe, stable and moral home, which status they never lawfully lost, but they have lost her.

What then may me deduce was the true rationale, the motive of Judge Taylor's Orders?

In December 1983, having lost Tiffany without an evidentiary hearing (I: pp. 23-24, 31-32, 34-51, 52-76, 88-89, and 96-121, III: pp. 431 ls. 16-19, & l. 24) the Wisharts, could not get one in time to stop the scheduled surgery, were compelled to go to extraordinary means (I: pp. 135-198, II: p. 220) to prevent what was known to them to be unnecessary surgery (I: pp. 135-198, II: pp. 203-210).

WISHART knew what had been diagnosed as a chronic medical problem was in fact a chronic medical neglect problem (II: pp. 204, 5), Leslie would not take Tiffany to the doctor nor give prescribed medicines, not even after the Wisharts took her.

Judge Rawlins, who became quite angry at Charles, made a vendetta of the matter after Judge Steinberg gave Tiffany to Bobbie (II: pp. 201-2).

He retried the matter in the Hillsborough County lunch room by gossip.

On August 7, 1987, Judges Ryder, Threadgill and Patterson, the 2d DCA panel, entered the opinion of *Bates v. Wishart*, (1987), *Id.*.

On the 8th day of September 1988, The Supreme Court entered its opinion in the case of *Wishart v. Bates*, (1988), *Id.*, and remanding the case to the present court.

The Supreme Court, ignored, or rather avoided the above facts and applicable law as would at least return TIFFANY to the WISHARTS, if not expell Leslie by operation by Chancery of the clean hands doctrine pursuant to *P_____ D_____ v. C_____ S_____*, 304 S.W.2d 437, 444 (Mo. Springfield C.A. 1965) (IV: p. 723), which holds that fraud and deceit makes a person unfit to have a child, but the Supreme Court reversed on the grounds that Section 61.13(2)(b)2.c, Fla. Stats. (Supp. 1978), allowed what the second panel disallowed, grandparent visitation, chiding both the second panel and the WISHARTS for not being aware of that change in the law.

In doing so, we find both the second panel of the Second District Court of Appeal and the Supreme Court abusing their discretion, as the scribes and pharisees had in The Holy Bible, K.J.V., Matt. 23: 23-24:

> 23 Woe unto you scribes and Pharisees, hypocrites! for ye pay tithe of mint and anise and cummin, and have omitted the weightier *matters* of the law, judgement, mercy, and faith: these ought you to have done, and not to leave the other undone.
>
> 24 *Ye* blind guides, which strain at a gnat, and swallow a camel.

Here we have an anomaly, the Supreme Court upheld, not Judge Hodges' visitation, which was ostensibly legal, but subordinate to Judge Steinberg's

Order, at least after the first panels opinion came down, but rather Judge Taylor's void visitation order which neither Leslie nor the Wisharts honor since there was no hearing.

Leslie appealed upon this law before the second panel of the Second District Court of Appeal, and The Florida Supreme Court, but it must be noted, only after she opposed Charles when he first raised it before JUDGE Taylor, for Judge Taylor could neither grant, nor in this case modify the Wisharts visitation without an evidentiary hearing showing changed circumstances, for his first order specifically prohibited such a proceeding.

Of course as always we have Leslie's deception by her concealment from the court the fact of the existence of Bobbie's visitation in Judge Menendez' Judgement, and the modifications by Judge Hodges granting the Wisharts visitation.

On the 17th day of December 1987 The Honorable Vernon W. Evans, Jr, (Judge V. Evans) issued an orentitled "Order Granting Motion For Involuntary Dis-Dismissal Of The Wishart Counter-claim For Custody of Tiffany Bates". (V: pp. 925-7)

Judge V. Evans' order was based upon the finding by Judge Menendez that Leslie was fit to have the care custody and control . . . [of Tiffany . . . .]

It should be noted that it is nearly imposible to prove anyone unfit when the social services have developed a position contrary to our morals, that:

> We cannot make moral judgements, that would be the imposition of religion on the person we are investigating, in violation of the separation of

Church and State, so a woman can sleep with 5 men at the same time and still be fit to have her child.

With no moral values under our law, no yardstick to measure conduct, we have the root and result of the tyranny in this case, the politicizing of the Courts and the Bar, for Blacks Law Dictionary, 4th Ed. pg. 1689 (IV: p. 598), defines tyranny as:

> **TYRANNY.** Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmetal powers.

The trial was flawed because for over a year the Wisharts had been cut off from not only their lawful custody, but also their lawful visitation, for they have been denied that visitation since Saturday October 18, 1986, not by denying it, but rather by refusing to compel LESLIE to obey the valid orders, or to punish LESLIE'S contempts of valid orders.

Without the opportunity to observe Tiffany, the Wisharts could not gather the fresh evidence to show Tiffany was still being abused by Leslie.

It is the equivalent of staking a person to the ground, going over the hill, and later proving they did not see Tiffany abused and therefore have no fresh evidence since the Courts made it difficult if not imposible to gather.

The Involuntary Judgement is flawed, but rather it is based upon a lie (V: pp. 928-941), the lie developed in the courthouse coffee shop, the essence of which was that when *Wishart v. Bates*, (1986), *Id.*, came

down the judges deliberately misconstrued the opinion to mean the Wisharts had told the first panel they had not had a hearing, so a hearing is what the Wisharts will be given.

The appeal was based upon the rule violation, which required the judgement to be reversed.

But, no one defended the Wisharts in the county court house lunch room, since their friends were honest, would not participate in the discussions, or the subject was changed whey they came into the room.

The rest followed a false conclusion, to deny the Wisharts the fruit of their victory, the plot was to uphold Judge Menendez' reversed Judgement as valid, Leslie fit, and the erroneous conclusion was that the Wisharts would only be allowed a hearing since it was imputed that they had said they had never had one while Leslie got all of the benefits of the Judgement including the voided finding that she was fit.

Section 61.131, Florida Statutes refutes that conclusion since Bobbie had primary residency when the final hearing was held, and had she lost it without a hearing, as the lie implies, that statute would have been invoked as it had been earlier as the grounds for the first panels reversal in *Wishart v. Bates*, (1986), *Id*, at 2.

Judge V. Evans Involuntary Judgement reflects this lie brought to fruition, Wishart had in fact lied to the first panel, saying they had not had a hearing, and now it was obvious to Judge V. Evans that they had lied for there were many exhibits stamped by Judge Menendez in the record of the December 1984 trial (IV: 737-751), showing the Wisharts had been heard and had presented evidence.

But the Wisharts had not lied, their appeal was based upon the violation of Rule 1.440, Fla. R. App. P., and there could be no trial with unsettled pleadings.

The Wisharts, putting forth this defense, filed their "Motion for New Trial and Rehearing of the Order by the Honorable Vernon W. Evans, Jr., Dated the 14th Day of December 1987 and Entitled 'Order Granting Motion For Involuntary Dismissal of the Wishart Counter-Claim for Custody of Tiffany Bates' ". (V: pp. 928-941)

That motion clarified *inter-alia* the fact of the mistrial and the issues before the first panel of the 2d District Court of Appeal. (III: pp. 586-594 & IV: pp. 737-751)

Confronted with the fact the Opinion reversing Judge Menendez' Judgement, for violation of rule 1.440, JUDGE V. EVANS recanted the substance of his first order on the 16th day of February 1988, by an order entitled "Order Denying Wisharts' Motion For New Trial And For Rehearing, And Denying Bates Motion For Award Of Attorney's Fees" (V: p. 942), which upheld the involuntary dismissal without explanation, and in spite of 4 doctors recommendations in the Wisharts' favor. (II: pp. 203-211)

This is a highly politicized case, in the Court lunch room, where politics has no place, and Tiffany without the Wisharts is a victim, the truth is concealed by the abuses of due process of law, and there is no one to champion her but the Wisharts.

THE QUESTION IS SUBSTANTIAL

In *State ex. rel. Singleton v. Woodruff*, 13 So.2d 704 at page 705, (Fla. 1943), *Id.*, at 6, the Supreme Court of Florida stated what was then unquestioned:

> Every system of law rests on a corresponding system of ethics that directs its course. The last-cited cases [*Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244; *Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637; and *Knowles v. United States*, 8 Cir., 170 F. 409] point this precept. We are committed to a free exercise of religious opinion but since our system of law rests on Christian ethics one would not be permitted to set up a harem and practice polygamy in Florida under the guise of religious freedom because polygamy is contrary to approved moral standards. If our law were predicated on Mohammedan ethics the converse would be true. If it were predicated on pagan ethics, I could sell my child as a slave and if predicated on still another system and I belonged to the sect known as Dukhoborrs, I would be permitted to traverse the highways nude under the guise of religion, but not so in our country because our system of moral teaching raises a different standard that the law must conform to.
>
> The reason the Bill of Rights immunized religion and the press from governmental interference is not far to seek. Sections five and Thirteen, Declaration of Rights, Constitution of Florida, merely reinforced the Federal immunization of these liberties. The authors of the Bill of Rights descended from ancestors who had been persucuted and condemned to rot in jail for indulging religious and secular beliefs. It took them a thousand years to wrest these liberties from arbi-

trary kings, hence the inhibition against any attempt to shackle the conscience. A liberated conscience is as essential to a robust democracy as blood is to the human body. Enslave the conscience and democracy will perish as certainly as the body will perish when the blood ceases to circirculate. The church, the press, and the assembly were set apart by the Bill of Rights to educate the mass conscience and give wings to public opinion. But the church and the press were not liberated from governmental interference carte blanche; to their liberty was attached an obligation to the public on parity with the freedom given.

> Freedom of conscience is much older that the Declaration of Rights or the common law. Peter and John first invoked it when they were commanded by the high priest and the Roman rulers to speak and teach no more in the name of God. Acts. 4:17-21 . So the soil from which it springs like many otherr cherished precepts of the common law reach back to Hebrew origin and historically reveal why a free press, speech, and religion are in a preferred class, protected by the State and Federal Constitutions and immunized from charge by the State.

The Wisharts in this case are Christians, Charles is a minister, a missionary, and opposed to the unlawful denigration of our common ground, the Christian Ethical values which made America free, and the loss of which always has produced anarchy and tyranny.

Clearly, the duty of the Courts is manifest, by their own stated decisions.

Since The Florida Bar Journal, Vol. LX, No. 8, dated Sept. 8. 1986, article at page 448, entitled *Family Law Judicial System, Indictment From Within*, has documented what the Wisharts both personally and professionally endured, that it is imposible to prove a person unfit, or to function as a defense attorney in such an arbitrary, value neutral system, all the Wisharts need say is that more administration and specialization is not the answer, the restoration of the Christian values is, and without that, our society is doomed to go the way of Rome and other nations that abandoned their moral values.

CONCLUSION

Charles cannot defend Tiffany, nor marriage in a system that has no values, for the same reason, the Wisharts have been cut off, contrary to law, from their duty to Tiffany.

This Court must exercise its appellate jurisdiction, to compel the State Courts to adhere to the Christian ethical system, and to restore as a result, Tiffany to the Wisharts.

Respectfully submitted,

Charles F. Wishart

CHARLES F. WISHART, ESQUIRE
FLORIDA BAR. NO. 095782

Bobbie S. Wishart

BOBBIE SUE WISHART, PRO SE
410 West Bloomingdale
Brandon, Florida 33511-7403

APPENDIX A
SUPREME COURT OF FLORIDA

No. 71,370

BOBBIE SUE WISHART, ET AL, Petitioners,

vs.

LESLIE M. BATES (BOGGS), ET AL., Respondents.

[September 8, 1988]

We have for our review Bates v. Wishart, 512 So. 2d. 977 (Fla. 2d DCA 1987), which directly and expressly conflicts with decisions of other district courts on the issue of granting visitation rights to grandparents. See Putnal v. Putnal, 392 So.2d 613 (Fla. 5th DCA 1981); Whitehead v. Hewett, 380 So.2d 492 (Fla. 1st DCA), dismissed, 385 So.2d 761 (Fla. 1980). We have jurisdiction. Art. V, § (3)(b)(3), Fla. Const. We quash that portion of the decision below which holds the trial court erred in granting visitation to the petitioners.

The following facts are revealed in the decision of the district court below:

> In 1983, appellant, Leslie M. Bates (Boggs), petitioned for a divorce alleging that her marriage to Randy Bates was irretrievably broken and sought custody of the parties' only child, Tiffany Michelle Bates. Appellant additionally sought a court order requiring the return of the child to her custody. She alleged that her husband had removed the child from their marital home and delivered the child to one Charles Wishart (the step-grandfather of the

> child) and Bobbie Sue Wishart (a grandmother of the child).
>
> The Wisharts, appellants here, were joined as necessary party defendants in the child custody matter pursuant to sections 61.1306 and 61.131, Florida Statutes (1983).
>
> . . .
>
> On February 26, 1985, a different trial judge entered a final judgement holding that the Bates' marriage was irretrievably broken and granted shared parental responsibility to the parents. Appellant was given primary residence of the child. The Wisharts appealed the final judgement. The natural father did not contest the order of the court below.

512 So.2d at 978. After the district court remanded with directions to afford the Wisharts an opportunity to be heard and present evidence, Wishart v. Bates, 487 So.2d 342 (Fla. 2d DCA 1986), the trial judge awarded the Wisharts visitation rights with the child on every other Saturday. 512 So.2d at 979.

On appeal, the district court held that the trial court erred in granting visitation rights to the Wisharts because " '[a]n order granting visitation rights to a non-parent of a child whose custody has been awarded to a fit parent is unjustified and unenforceable.'" Id. (quoting Sheehy v. Sheehy, 325 So.2d 12 (Fla. 2d DCA 1975)). In support of its holding, the district court also relied on Tamargo v. Tamargo, 348 So.2d 1163 (Fla. 2d DCA 1977), and Rodriguez, 295 So.2d 328 (Fla. 3d DCA 1974). These decisions, however, were issued prior to the effective date of section 61.

13(2)(b), Florida Statutes (Supp. 1978), which provides in relevant part: "The court may award the grandparents visitation rights of a minor children [sic] if it is deemed by the court to be in the child's best interest." The existence of this statute was apparently overlooked by the parties and the district court.

Accordingly, the district court below erred in holding that the trial court could not grant visitation to the Wisharts and we quash that portion of the decision below. We remand to the district court for proceedings consistent with this opinion. Because section 61.131(2)(b) provides that an award of visitation rights to a grandparent may be made by the trial court if it is deemed to be in the child's best interests, the only issue before the district court on remand will be whether the trial court abused its discretion in determining that awarding visitation to the Wisharts was in the child's best interest. See Dinkle v. Dinkle, 322 So.2d 22 (Fla. 1975) (When the trial court, in a custody proceeding, makes a determination on the basis of the best interests of the child, the appellate court should not reverse absent a showing of abuse of discretion.).

It is so ordered.

OVERTON, McDONALD, SHAW, BARKETT, and KOGAN, JJ., Concur, GRIMES, J. Did not participate in this case.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Class of Constitutional Officers

Second District - Case No. 86-2408

Charles F. Wishart, Brandon, Florida,

for petitioners

Leslie M. Bates (Boggs), in proper person, Seffner, Florida

for respondents [sic]

APPENDIX B

SUPREME COURT OF FLORIDA

TUESDAY, NOVEMBER 8, 1988

BOBBIE SUE WISHART, et al.,	*	
	*	
Petitioners,	*	CASE NO. 71,370
	*	
v.	*	DISTRICT COURT
	*	OF APPEAL,
LESLIE M. BATES (BOGGS),	*	2D DISTRICT -
et al.,	*	NO. 86-2408
	*	
Respondents.	*	
	*	

* * * * * * * * * * * * * * * * *

Upon consideration of the Motion for Rehearing and Clarification filed in the above cause by petitioners, and response thereto,

IT IS ORDERED that said motion be and the same is hereby denied.

A true Copy TC

TEST:

(Seal)

/s/
Sid J. White
Clerk, Supreme Court

CC: Hon. William A. Haddad, Clerk
Hon. Peter J. T. Taylor, Judge.
Hon. Richard L. Ake, Clerk
Charles F. Wishart, Esquire
Ms. Bobbie Sue Wishart
Ms. Leslie M. Bates (Boggs)

APPENDIX C

CONSTITUTION OF THE UNITED STATES

ARTICLE VI.

This Constitution and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT I.

Congress shall make no law . . . prohibiting the free exercise . . . [of religion] . . . .

AMENDMENT V.

No person . . . shall be deprived of life, liberty, or property, without due process of law . . . .

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

APPENDIX D

TREATIES OF THE UNITED STATES

TREATY OF AMITY, SETTLEMENT AND LIMITS

ARTICLE V

The inhabitants of . . . [inter-alia Florida] shall be secured in the free exercise of their religion, without any restriction . . . .

With the United States of America and his Catholic Majesty, dated February 22, 1822.

PARIS PEACE TREATY (1898)

ARTICLE X

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

With the United States of America and the King of Spain, dated December 10, 1898.

TREATY OF FRIENDSHIP AND GENERAL RELATIONS

ARTICLE IV

The citizens or subjects of the two High Contracting Parties shall enjoy in the territories of the other the right to exercise their worship . . . subject to the Constitution, Laws and Regulations of the respective countries.

With the United States and Spain, dated July 3, 1902.

APPENDIX E

CONSTITUTION OF THE STATE OF FLORIDA

DECLARATION OF RIGHTS

SECTION 1. Political Power,—All political power is inherent in the people. The ennuciation herein of certain rights shall not be construed to deny or impair others retained by the people.

SECTION 2. Basic Rights.—All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; . . . No person shall be deprived of any right because of . . . religion . . . .

SECTION 3. Religious freedom.—There shall be no law . . . prohibiting of penalizing the free execise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety . . . .

SECTION 9. Due Process.—No person shall be deprived of life, liberty, or property without due process of law . . . .

SECTION 21. Access to Courts.—The courts shall be open to every persor or redress of any injury, and justice shall be aministered without sale, denial, or delay.

ARTICLE V

SECTION 3, **Supreme court,**—

. . .

(b) JURISDICTION.—The Supreme Court:

. . .

(3) May review any decision of a district court of appeal that expressly . . . affects a class of constitutional officers, or that expressly and directly conflicts

with a decision of another district court of appeal or of the supreme court on the same question of law.

. . .

Section 15. **Attorneys; admission and discipline.** —The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

IN THE SUPREME COURT
STATE OF FLORIDA

BOBBIE SUE WISHART, and

CHARLES F. WISHART,

Appellees,
Cross-Appellants,
and Petitioners,

v.

LESLIE M. BATES (BOGGS),

Appellant, Cross-Appellee,
Respondent.

v.

RANDALL A BATES,

Cross-Appellee, Respondent.

CASE NO. 71,370

2d DCA CASE
NO. 86-2408

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

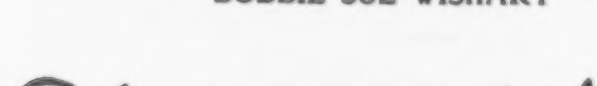
Notice is hereby given that Charles F. Wishart and his wife Bobbie S. Wishart, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgement of the Supreme Court of the State of Florida, favorably reversing in part, for the wrong reasons, while failing to reverse in total the opinion of *Bates v. Wishart*, 512 So.2d 977 (Fla. 2d DCA 1986), thereby failing to ratify and enforce *Wishart v. Bates*, 487 So.2d 342 (Fla. 2d DCA 1987), and failing to address certain other issues raised by CHARLES, a State Constitutional Officer,

the opinion being entered on the 8th day of September 1988, and rendered on the 8th day of November 1988.

This appeal is taken pursuant to 28 U.S.C. § 1257(1).

Respectfully submitted,

BOBBIE SUE WISHART



CHARLES F. WISHART
Attorney at Law
410 West Bloomingdale
Brandon, Florida 33511